

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1301 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHANTILAL CHHAGANLAL KHAMBHATI

Versus

GOPILAL DHANRAJ SHAH

Appearance:

MR SH SANJANWALA for Petitioners

MR MG NAGARKAR for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/04/2000

ORAL JUDGEMENT

#. The petitioners in this revision application are the original plaintiffs of Civil Suit No.23/78. The

aforesaid suit was filed by them against the opponent original defendant for getting the decree for possession of the suit premises. It is the case of the plaintiffs in the said suit that, they are the owners of the suit shop which is situated in the station locality of Bardoli Town. The said premises is known as "Motikunj". The aforesaid shop was let out to the defendant at the rate of Rs.65/- per month. A rent note was executed and the defendant had agreed to pay the rent regularly. The defendant had also agreed to use the said shop for the purpose of his business only. According to the plaintiffs, the tenant had not paid the rent from 1.1.1977, and therefore, he was subjected to the demand notice. Yet, he did not tender any amount of arrears of rent, therefore, according to the plaintiffs, they were entitled to get the decree for possession on the ground of arrears of rent. It is also the case of the plaintiffs that the defendant was not using the suit property and the same was kept closed. Therefore, he was entitled to be evicted on the ground of nonuser of the suit premises. After the suit notice, the aforesaid suit was filed for getting the decree for possession on the ground of arrears of the rent as well as on the ground of nonuser of the suit premises.

#. The defendant appeared in the suit by filing the written statement at Exh.11. According to the defendant, the standard rent of the suit premises should not be more than Rs.10/- per month. According to the defendant, he had gone to pay the rent, but the same was not accepted by the landlord on the ground that there was no hurry for payment of the rent. The suit of the plaintiffs was resisted by the defendant on both the grounds, that is, arrears of rent as well as on the ground of nonuser of the suit premises.

#. The learned trial Judge after raising necessary issues and after recording the evidence of the parties ultimately came to the conclusion that the plaintiffs are not entitled to get the decree for possession on the ground of arrears of rent. However, it was found that the plaintiffs were entitled to get the decree on the ground of nonuser of the suit premises. Accordingly, the suit was decreed on the aforesaid ground of nonuser of the suit premises.

#. The aforesaid decree for possession was challenged by the defendant by filing Regular Civil Appeal No.41/82. The aforesaid appeal was heard by the learned Assistant Judge, Surat who by his judgment and order dated 26.4.1983 allowed the same and decree for possession

passed by the trial court was set aside and accordingly the suit for possession was dismissed by the learned appellate Judge.

#. The original plaintiffs have filed this civil revision application against the aforesaid order of the learned appellate Judge.

#. At the time of hearing of this civil revision application, Mr. Sanjanwala, learned advocate for the petitioners, submitted that the appellate court has committed an error of law in reversing the decree of the trial court in so far as the question about nonuser of the suit property is concerned. It is true that the trial court was of the opinion that the suit premises was not used by the tenant, and that, therefore the decree under section 13(1)(k) of the Bombay Rent Act was passed. The trial court has relied upon the evidence of the plaintiffs at Exh.38 and two documentary evidences at Exh.51 and 52. However, the appellate court was of the opinion that the plaintiff has to prove the case of nonuser as the burden to prove the same is on the plaintiffs. It has been found by the learned appellate Judge in para 8 of his judgment that the plaintiff-Shantilal Chhaganlal was not having any personal knowledge regarding nonuser of the suit premises. At the relevant time, the plaintiff was residing in a different town, that is, Dharampur. It has come in the evidence that the plaintiff was staying at the said place, that is, Dharampur for the last 10 years and that the rent was collected by his brother. The said brother of the plaintiff was not examined in the evidence. The plaintiff even did not know the names of other tenants occupying the suit premises. The plaintiff is, therefore, absolutely ignorant about the factual position of the suit premises, and therefore, the learned appellate Judge did not think it fit to give any weightage to the evidence of the plaintiff for coming to the conclusion about nonuser of the suit premises by the defendant. Very cogent reasons have been given by the learned appellate Judge in not believing the evidence of the plaintiffs on the ground of nonuser. Therefore, it is not possible for me to take any different view on the aforesaid question which is based on the appreciation of the evidence while exercising revisional jurisdiction. It is found that the plaintiffs have not examined any tenants residing in the suit premises, nor they have examined even any neighbour to prove the fact about nonuser of the suit property. It was, therefore, rightly found by the appellate court that the landlords have not adduced any cogent evidence to prove nonuser of the suit

premises. The plaintiffs could have asked for the appointment of the Court Commissioner by which atleast some light could have been thrown about the physical position of the suit premises. The plaintiffs even did not think it fit for appointment of the Court Commissioner. The learned appellate Judge has also considered two documents Exh.51 and 52 on which the trial court has relied upon. Exh.51 is the extract of register maintained by the Bardoli Nagar Panchayat under the Bombay Shops and Establishment Act. Exh.52 is the application in prescribed form A for the registration of the establishment of the defendant under the Bombay Shops and Establishment Act. The defendant - tenant had applied for registration of his establishment under the Bombay Shops and Establishment Act on 25.2.1978. The licence was obtained under the Bombay Shops and Establishment Act on 25.2.1978. The aforesaid documents show that the defendant was carrying on business of grocery in the said shop in the name and style of Mahesh Trading Company and General Stores. As per Exh.51 and 52 the grocery business was commenced in the suit shop on 26.1.1978. It was found by the appellate court that the aforesaid date was the date for commencement of the said business, that is, 26.1.1978. However, the trial court took into consideration the date of the application for registration of the shop, that is, 25.2.1978. Simply because the defendant applied for registration at later point of time, it cannot be said that the business was also commenced from that date. It was found by the appellate court that, very documents at Exh.51 and 52 clearly show that, grocery business of the defendant in the suit premises was commenced by the defendant on 26.2.1978. It was, therefore, found that it cannot be said that the tenant had not used the suit premises within last six months immediately precedent the date of the filing of the suit. It is found by the appellate court that requirement of section 13(1)(k) of the Bombay Rent Act is not fulfilled. It is also found by the appellate court that, on the date of filing of the suit, that is, 27.1.1978 documents at Exh.51 and 52 clearly show that, on the said date the defendant was using the suit premises for the purpose of grocery business and that the said business was started on 26.1.1978. Therefore, it is clear that the suit premises was being used for the purpose of grocery business on the date of institution of the suit.

#. Under these circumstances, the appellate court reversed the decree of the trial court in so far as the question of nonuser is concerned. Even otherwise as stated earlier, the plaintiff was not having any personal

knowledge about the factum of nonuser of the suit premises nor he had examined any neighbour or any other tenants occupying the suit premises. The learned appellate Judge was, therefore, perfectly justified in drawing adverse inference against the plaintiffs.

#. The first appellate court is the final court in so far as the appreciation of the evidence is concerned and as per the evidence on record, the appellate court reached the conclusion that the plaintiffs have failed to prove that the defendant has not used the suit premises as contemplated by section 13(1)(k) of the Bombay Rent Act. The finding of the appellate court is, therefore, based on the appreciation of the evidence and the said finding cannot be said to be in any way contrary to law or not supported by any evidence on record. In that view of the matter, it cannot be said that the order of the appellate court suffers from any error of law which is required to be corrected by this court in its revisional jurisdiction. I, therefore, do not find any substance in the argument of the learned advocate for the petitioners that the appellate court has committed an error in reversing the decree of the trial court in so far as the question of nonuser of the suit premises is concerned.

#. So far as the question about the arrears of rent is concerned, both the courts have given very cogent reasons in coming to the conclusion that the tenant was ready and willing to pay the rent. The case in question falls under section 12(3)(b) of the Bombay Rent Act. The issue of the standard rent was decided by the trial court at the fag end of the trial and it was found that, at the time of the judgment of the trial court, deposit of the rent exceed the amount which was actually due, and during the appellate stage the entire amount was deposited by the tenant and accordingly both the courts came to the conclusion that the tenant was ready and willing to pay the rent. I do not find any infirmity in the order of the courts below in so far as the question about nonpayment of rent is concerned.

##. In that view of the matter, the present civil revision application is devoid of any merits and the same is required to be dismissed. Civil Revision Application is accordingly dismissed. Rule discharged with no order as to costs.

(P.B.Majmudar,J.)
(pathan)